

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
ZIMMIAN TABB, :
:

Petitioner, :
:

-against- :
:

UNITED STATES OF AMERICA, :
:

Respondent. :
:
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**ORDER DENYING 28 U.S.C. §
§2255 MOTION TO VACATE**

16 Cr. 747 (AKH)

23 Civ. 5229 (AKH)

ALVIN K. HELLERSTEIN, U.S.D.J.:

In light of the Second Circuit's decision in *United States v. Pastore*, 83 F.4th 113 (2d Cir. 2023), and Petitioner's April 9, 2024 notice withdrawing his request for oral argument, Petitioner's motion to vacate his sentence pursuant to 28 U.S.C. § 2255 is denied. *See* 28 U.S.C. § 2255(b) (no hearing necessary where "the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief").

I decline to issue a Certificate of Appealability because Petitioner has "not made a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), and because Petitioner has failed to identify a claim that jurists of reason would find debatable as to whether Petitioner was denied such a right. *See Slack v. McDaniel*, 529 U.S. 473,478 (2000). The Clerk is instructed to terminate the open motion at ECF No. 1 in 23cv5229 and ECF No. 68 in 16cr747 and mark 23cv5229 closed.

SO ORDERED.

Dated: April 10, 2024
New York, New York


ALVIN K. HELLERSTEIN
United States District Judge